IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10626 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VIKRAMSINH MANUBHA

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 10626 of 1999

MR MUKESH H RATHOD for Petitioner No. 1

MR SAMIR J DAVE for Respondent No. 1-2

MR MA PATEL for Respondent No. 3-5

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 24/06/2004

ORAL JUDGEMENT

The petitioner has challenged the order dated 22nd October, 1999 whereby, the Ministry of Labour,

Government of India, has refused to make Reference under on the ground that the claim is badly delayed and the workman has not rendered the specified period of service in any calender year.

1.1. The petitioner was engaged as a casual labour under Loco Foreman, Rajkot with effect from 28th May, 1979. After serving in various departments for temporary period, his service was terminated with following any procedure. Ultimately, he made complaint on 15th April, 1990 before the Conciliation Officer i.e. Assistant Labour Commissioner (Central) Adipur (Kutch). Since the conciliation proceedings failed, failure report was submitted. The competent authority was requested to make Reference under Section 10 of the Industrial Disputes Act. However, the Ministry of Labour, Government of India, vide communication dated 22nd October, 1999 addressed to the Divisional Railway Manager, and other authorities including the President of Saurashtra Employees' Union, Rajkot, it was intimated that in reference to the failure of conciliation report dated 30th June, 1999 submitted by the Assistant Labour Commissioner, Adipur, Kutch, which was received by the said Ministry on 19th July, 1999, prima facie, the Ministry was not of the opinion that the dispute be referred to the Industrial Tribunal and the reason was stated as under :-

> "Besides the fact that the claim is badly delayed, the disputant has not rendered the specified period of service in any calender years."

1.2. It is this order which is now sought to be challenged in this petition under Article 227 of the Constitution of India.

3. Having heard Mr. M.H. Rathod, learned advocate for the petitioners and Mr. Samir Dave, learned A.G.P. for respondents nos. 1 and 2 and Mr. M.A. Patel learned advocate for respondents nos. 3 to 5, it is clear that the request for the reference is not acceded to, solely on the ground that the dispute has been raised at a belated stage and unjustifiable reasons have been advanced for the delay.

3.1. It is by now a well settled proposition of law that the request for making reference cannot be turned down solely on the ground of delay. The Apex Court in the case of Ajaib Singh v/s. Sirhind Cooperative Marketing-cum-Processing Service Society Ltd. reported

in AIR 1999 S.C. p. 1351 has held that provisions of Article 137 of the Schedule to the Limitation Act are not applicable to the Industrial Disputes Act and relief cannot be denied to workman merely on the ground of delay. Similar view has been taken by the Apex Court in the case of Sapan Kumar Pandit v/s. U.P. State Electricity Board reported in 2001 III CLR p.16. This Court has also followed the said judgment and taken the same view in the judgment rendered in the case of Mazdoor Kalyan Sangh v/s. Government of India in Special Civil Application No. 2001 of 1994 dated 16th April, 2004.

4. In view thereof, and in view of the decisions which have been referred to above, this petition deserves to be allowed. The impugned order dated 22nd October, 1999 is quashed and set aside. The Competent Officer is directed to reconsider the demand and make the reference. The petition is allowed. Rule made absolute with no order as to costs.

[AKSHAY H. MEHTA, J.]

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